OFFICE OF THE
PRESIDING DISCIPLINARY JUDGE
SUPREME COURT OF ARIZONA

OCT 22 2019

FILED

BY

Hunter F. Perlmeter, Bar No. 024755
Senior Bar Counsel
State Bar of Arizona
4201 N. 24th Street, Suite 100
Phoenix, Arizona 85016-6266
Telephone (602)340-7278
Email: LRO@staff.azbar.org

**BEFORE THE PRESIDING DISCIPLINARY JUDGE**

| | |
|---|---|
| **IN THE MATTER OF A MEMBER OF THE STATE BAR OF ARIZONA,**<br><br>**JOHN E. CHAIX, Bar No. 017965,**<br><br>Respondent. | **PDJ 2019-9076**<br><br>**COMPLAINT**<br><br>[State Bar No. 18-1544] |

Complaint is made against Respondent as follows:

## GENERAL ALLEGATIONS

1. At all times relevant, Respondent was a lawyer licensed to practice law in the state of Arizona having been first admitted to practice in Arizona on April 21, 1998.

**COUNT ONE (File no. 18-1544/Trust Account)**

2. During April of 2018, the average principal balance for Respondent's trust account was negative <$7,670.35>.

3. The trust account examiner performed an extended review of the trust account covering the period of January 2016 through November 2018.

4. Respondent engaged in approximately fifty-four instances of conversion during that time totaling $637,933.07.

5. In addition, the recreated account ledgers Respondent submitted during the pendency of the State Bar's investigation document no less than an additional $123,115.44 converted prior to the period of review.

6. During a period of six months, Respondent used $254,292.37 belonging to client *TUL and third-parties to cover personal expenses and shortages in his operating account.

7. Respondent deposited a $250,000.00 settlement check into the operating account on October 23, 2017. Within the thirty-six days that followed, Respondent improperly expended the entirety of TUL's settlement.

8. Respondent obtained a total settlement of $500,000.00 for *TUL. He drafted a settlement breakdown letter to *TUL that identified the settlement split as

follows: Respondent's 35% contingency - $175,000.00; "Case Costs" - $74,176.63; and "Net Amount" to client - $250,823.37.

9. The settlement terms called for a four-month payment schedule. Respondent informed the client of this by email dated October 3, 2017. Respondent stated the following: "The mediator agreed to [opposing party's] request for installment payments with a lump sum of $250,000 in Oct which will go to experts and attorney's fees and three equal payments in Nov, Dec and Jan."

10. The initial lump payment was obtained by Respondent's office on October 20, 2017. Of that amount, $823.37 was due to the client as part of the net recovery. No less than $3,469.00 was due to third-party service providers. Respondent was thereby obligated to deposit the check into the trust account until the funds were collected, then proceed to remove attorney's fees and costs personally advanced.

11. Instead, Respondent directed his secretary to deposit the entire $250,000 check into his operating account on October 23, 2017. No attempt was made to move the portion of unearned client and third-party funds to the trust account. On November 28, 2017, 36 days after the deposit of the *TUL settlement check, the operating account was left with a negative balance of <$6,368.74>.

Respondent thereby misused approximately $4,292.37 belonging to the client and third-parties.

12. The four remaining settlement payments totaling $250,000.00 were exclusively due to *TUL. Respondent received and deposited into the trust account such payments between November 2017 and February 2018. Respondent, however, did not attempt to disburse the funds to the client until April 17, 2018. Respondent thereby deferred payment for upwards of four months.

13. In the interim, Respondent steadily moved *TUL's settlement funds into his operating account. He removed the entirety of the four settlement payments from the trust account and into his operating by way of eleven transfers. Upon depositing *TUL's money into the operating account, Respondent promptly expended *TUL's funds.

14. The negative operating account balance caused on November 28, 2017 was offset on November 29, 2017, by way of a $30,000.00 transfer of trust funds belonging to *TUL. In addition to offsetting the deficit balance, Respondent used *TUL's funds to disburse three checks totaling $1,413.01 and initiated approximately five electronic withdrawals totaling $17,169.77 — $18,582.78 total. The expenses covered by *TUL's settlement funds included a $250.00 payment for

landscaping and toilet repairs made to an unspecified condo, as well as a total disbursement of $16,018.91 to Paychex Inc. for "PAYROLL" and "TAXES."

15. On December 4, 2018, Respondent again depleted the trust funds deposited into the operating account and overdrew the account, leaving the operating account balance negative <$1,526.08>.

16. Additional disbursements increased the operating account deficit to negative <$3,984.80> on December 5, 2018. The operating account deficit was offset the next day, December 6, 2017, by way of an additional $30,000.00 transfer of *TUL's trust funds. Despite the lack of personal funds, Respondent proceeded to transact various checks and electronic withdrawal disbursements until the operating account was again overdrawn and a deficit balance of <$7,046.59> was held on December 14, 2017.

17. The negative operating account balance caused on December 14, 2017 was offset the next day, December 15, 2017, by way of a $30,000.00 transfer of trust funds that included $23,000.00 belonging to *TUL. In addition to offsetting a portion of the deficit operating balance, *TUL's funds were used to cover expenses that included a $100.00 payment for "Biltmore Condo Toilet Repairs," as well as to facilitate a disbursement of $7,000.00 to "JBJM I" and $1,700.00 to "JBJM II."

18. During the period of review, operating disbursements were made regularly to JBJM, JBJM I, and JBJM II. Some of the disbursements were facilitated by way of trust funds belonging to clients and third-parties. Records filed with the Corporation Commission reflect that JBJM Camelback, LLC and JBJM Camelback II, LLC are comprised of JBE Properties, LLC and MJC Building Investment, LLC. The latter was formed in 2005, with "John E. Chaix" (Respondent) and "Michelle L. Chaix" noted as the managing members. In 2008 Respondent "as Trustee of the Chaix Family Trust, Its Member" revised the articles of organization to reflect "the sole Member" of MJC Building Investment LLC as the "Chaix Family Trust."

19. The JBJM checks issued in December were written and cleared on December 21, 2017. The operating account balance on that day was $5,259.51, all of which consisted of funds belonging to client *TUL. The posting of the JBJM checks caused the account to be overdrawn, leaving a deficit balance of <$3,440.49>. That deficit was offset the next day by way of earned fees transferred from the trust account.

20. On January 11, 2018, Respondent transferred $50,000.00 belonging to *TUL from the trust account to his operating account, yielding an ending operating account balance of $64,074.67 on that day. At the time, no less than nine checks

totaling $45,170.20 were outstanding. Without *TUL's trust funds, Respondent's operating account would have held an ending balance of $14,074.67, thereby lacking $31,095.53 to enable all checks that remained outstanding to clear without incident.

21. On January 25, 2018 Respondent overdrew the operating account, leaving a negative balance of <$506.48>. Subsequently, on January 30, 2018 the operating account held a negative balance of <$23,668.26>. The deficit balance was offset the next day, on January 31, 2018, by way of a $60,000.00 transfer from the trust account, which included $33,000.00 belonging to client *TUL. The ending operating account balance on that day was $32,735.08. At the time, no less than nine checks totaling $32,512.68 were outstanding. Without *TUL's trust funds, Respondent's operating account would have held an ending balance of negative <$264.92>, thereby lacking funds to enable all checks that remained outstanding to clear without incident.

22. On February 15, 2018, Respondent overdrew the operating account, leaving a negative balance of <$4,820.03>. The deficit balance was offset the next day, on February 16, 2018, by way of a $30,000.00 transfer from the trust account, which included $18,905.35 belonging to client *TUL. The ending operating account balance on that day was $25,179.97. At the time, no less than ten checks totaling

$14,605.52 were outstanding. Without *TUL's trust funds Respondent's operating account would have held an ending balance of $6,274.62, thereby lacking $8,330.90 to enable all checks that remained outstanding to clear without incident.

23. Expenses presented for payment during the month exceeded the available funds, yielding a negative operating balance of <$10,517.32> on February 27, 2018. Leading up to that overdraft *TUL's trust funds facilitated the posting of a $13,840.65 disbursement to Paychex for "PAYROLL" purposes. The disbursement had been previously attempted on February 14, 2018, but was returned unpaid on February 15, 2018 because the operating account balance at the time was approximately negative <$10,978.07>. Following the deposit of *TUL's trust funds, the payroll disbursement was attempted a second time on February 20, 2018 and cleared without incident. *TUL's funds also facilitated a $7,000.00 disbursement to JBJM and an additional "PAYROLL" withdrawal to Paychex Inc in the amount of $11,616.46.

24. On March 2, 2018, Respondent overdrew the operating account, leaving a negative balance of <$1,422.49>. The deficit balance was offset on March 5, 2018 by way of a $30,000.00 transfer of trust funds belonging to *TUL. That day, despite the lack of operating funds, six electronic disbursements totaling

$12,458.72 were transacted, mainly to pay creditors, leaving a balance of $16,118.79. The next day an additional $13,017.16 of *TUL's funds were used pay creditor "AMEX." Respondent expended *TUL's residual funds by March 12, 2018. On that day Respondent overdrew the operating account, leaving a negative balance of <$6,003.66>.

25. Additional deductions increased the deficit to <$20,003.66> on March 13, 2018. The next day, on March 14, 2018, $30,000.00 belonging to *TUL was transferred from the trust account to the operating account. The same day two electronic disbursements totaling $12,015.27 were also conducted, leaving the operating account with a deficit balance of <$2,018.93>. One of the two electronic disbursements consisted of an $11,616.46 disbursement to Paychex Inc for "PAYROLL" purposes. The operating account maintained a fluctuating deficit balance through March 19, 2018. The account remained positive from the 20th through the 27th (i.e. eight days).

26. On March 28, 2018, Respondent overdrew the account, leaving a negative balance of <$7.50>. The next day, on March 29, 2018, $6,778.15 was transferred from the trust account to the operating account; $5,094.65 belonged to *TUL and constituted the remaining balance of *TUL's $250,823.37 net settlement.

The transfer from the trust account depleted the trust account balance to zero. The same day, an electronic disbursement in the amount of $11,518.37 was issued from the operating account to Paychex Inc for "PAYROLL." The operating account ending balance on that day was negative <$4,797.72>. Respondent thereby expended the last of *TUL's funds. Further deductions yielded a month-end operating balance of negative <$9,742.97>.

27. Respondent's bank issued a negative balance report to the State Bar of Arizona on April 17, 2018, when Respondent wrote trust account check number 3008 payable to client *TUL in the amount of $250,823.37. *TUL's check was presented for payment on April 25, 2018 when the trust account balance was zero. The bank paid the check and charged a $28.75 overdraft fee, leaving the account with a negative balance of <$250,852.12>. On April 26, 2018 Respondent offset the IOLTA deficit by depositing personal funds from the operating account. Respondent thereby, converted *TUL's funds for approximately 185 days.

28. The beginning balance in the operating account on the day TUL's funds were deposited was negative <$22,958.82>. No deposits were transacted to offset that deficit. The only other funds deposited into the operating account between the day TUL's funds were deposited and the day the balance was expended, consisted

of two transactions in early November, 2017, totaling $161.01. Therefore, $22,958.82 of TUL's funds were instantly converted upon deposit into the operating account.

29. Despite the lack of personal funds, eighty-two disbursements totaling $195,742.08 were initiated between October 23, 2017 and November 28, 2017. Those disbursements, the preexisting negative balance, and outstanding operating account checks that cleared during the time in question, depleted the TUL deposit until the account reached a negative balance of <$6,368.74> on November 28, 2017. Thereby expending the last of TUL's settlement funds.

30. All of *TUL's funds were used to pay personal expenses at a time when Respondent's operating account was or soon would be at a deficit.

31. The initial lump settlement check deposited into the operating account reflects that the item was not designated for deposit into the operating account from the onset.

32. The check in question, made payable solely to the client, was initially endorsed with Respondent's trust account endorsement stamp. This stamp designates items for deposit into the Law Offices of John Chaix, APC IOLTA Account. The stamped endorsement was manually altered by crossing out the text

reading IOLTA and designating the item for deposit into the Law Offices of John Chaix, APC Account. In addition, the operating account number was handwritten in place of the stamp's predesignated trust account number, which was also manually crossed out.

33. Respondent instructed his secretary, Ms. Petell, to perform the above action and deposit the check into the firm's operating account.

34. Between May and October of 2016 (184 days), Respondent moved $269,980.73 from the trust account to his operating account by way of fifteen transfers when the only funds available for disbursement totaled $7,265.38. Respondent was unable to attribute the disbursements to any specific client matter. The recreated records provided by Respondent to the State Bar identify these disbursements as "Miscellaneous Client" activity. Respondent, by way of the miscellaneous disbursements, created a deficit in the trust account that began as a <$12,734.62> shortage on May 6, 2016, and steadily increased to a <$249,915.35> shortage on October 3, 2016.

35. Between May and October of 2016, Respondent's operating account maintained a negative balance on six days. No less than $40,000.00 of the converted trust funds were disbursed to JBJM by way of wire transfers performed the same day

the trust funds were deposited into the operating account. Absent the miscellaneous trust funds, Respondent's operating account would have held a negative balance on 179 of the 184 days. Respondent replenished the trust account on November 10, 2016. Respondent thereby converted approximately $262,715.35 from the trust account for a period of 188 days.

36. In May 2016, Respondent repeatedly misused client funds for personal purposes. During that month, Respondent wrote eleven checks from his operating account totaling $11,322.13 and transacted twenty-six electronic disbursements totaling $88,513.06; $99,835.19 total. Yet, Respondent's account balance at the onset of May was $12,335.95. Of that amount, approximately $11,122.69 was available for disbursement. The only funds deposited into the operating account during that month consisted of trust funds totaling $87,488.36. The transfers left the trust account with a deficit of no less than <$80,222.98> at the end of May 2016.

a. Approximately 75% of the funds converted that month belonged to client *WV. In the *WV matter the client was due a net total of $229,759.07. That balance was received by no later than March 4, 2016. On March 10, 2016 Respondent disbursed a portion of earned fees to himself but delayed issuing a disbursement to the client until August 11, 2016. Respondent thereby deferred payment to the client for approximately 154 days. $20,000.00 of the $87,488.36 moved to the operating account was disbursed to JBJM by way of a wire transfer; $49,974.19 was disbursed to "Paychex" for payroll processing/taxes/invoicing; and the remaining $17,514.17 was used to pay

vendors such as "AETNA," "Staples Credit Plan," "Verizon Wireless," "Shell," "American Express," and "Nordstrom."
Without the miscellaneous funds that originated from the trust account, the operating account would have held a deficit balance throughout May, ending with a negative balance of <$87,918.21.>. Ultimately, a total of $100,254.16 in electronic and check disbursements posted during the month. As a result, the ending balance in May was negative <$429.85>. The miscellaneous IOLTA funds deposited in subsequent months similarly facilitated payments to the same types of entities such as JBJM and Paychex.

b. On November 10, 2016, Respondent deposited $339,500.00 into the trust account from his operating account. The funds offset the aforementioned <$249,915.35> deficit created by miscellaneous disbursements transacted by Respondent. Respondent failed to remove the excess $89,584.65 from the trust account and the balance was maintained on deposit through May 14, 2017. On May 15, 2017, miscellaneous disbursements from the trust account to the operating account began depleting the excess funds. By February 16, 2018, $14,711.32 remained unexpended. On February 28, 2018, Respondent disbursed $15,000.00 to the operating account, thereby leaving a deficit of <$288.68> in the trust account. Respondent thereby commingled excess personal funds in the trust account for approximately 475 days.

The recreated ledgers initially reflected the subsequent deficit through the end of the period of review. By letter dated May 10, 2019, a revised ledger was provided reflecting an offsetting deposit entry on September 6, 2018 in the exact amount of the deficit. A physical deposit, however, was not evident on the bank statements. Instead, the deficit appears to have been offset by way of funds held on deposit for the *GTM matter and excess administrative funds.

Specifically, the trust account balance at the end of the period of review was $100.09. Respondent identified that balance as consisting of $100.00 in administrative funds and 9¢ in interest. The examination later revealed that at the end of the period of review an additional $288.68 should have been held on deposit; $261.28 for *GTM, of which $144.03 belonged to clients in

the *GTM matter and $27.40 in residual administrative funds. Respondent thereby converted other clients' funds for approximately 275 days (i.e. 9 months and 2 days) and counting.

c. During the month of May 2017, Respondent disbursed $73,451.94 to the operating account purportedly on behalf of the *FNT matter. The available balance, however, was $15,050.00, leaving a deficit of <$58,401.94> in the trust account. On October 4, 2017, Respondent disbursed an additional $4,000.00 on behalf of that matter, increasing the deficit to <$62,401.94>. The deficit was offset on November 28, 2017, by way of earned funds obtained from matter *FNS.

   The individual transfers occurred at or around a time when Respondent's operating account did not have sufficient funds to clear all disbursements without incident. For example, the beginning balance in the operating account on May 15, 2017 was negative <$32,645.24>. The only deposit transacted that day consisted of a $40,000.00 transfer of funds from the trust account, of which $33,451.94 was purportedly conducted on behalf of *FNT. Despite the transfer, additional disbursements resulted in an ending balance of negative <$5,667.94> on that day.

   Similarly, the beginning balance in the operating account on May 26, 2017 was $2,800.56. That day, a single check in the amount of $6,205.00 cleared for work done at a "Biltmore Condo." The same day, Respondent transferred $40,000.00 from the trust account purportedly from the *FNT matter which, in reality, held no funds in trust. Absent the trust account funds the operating account would have held a negative balance of<$3,404.44> at the end of that day. The net excess transferred was subsequently expended by way of creditor payments and payroll. Respondent thereby converted other clients' funds to cover personal expenses for approximately 197 days (i.e. six months and thirteen days).

d. Between June 18 and June 28, 2018, Respondent disbursed $38,185.87 to his operating account on behalf of the *RMTM representation, when no more than $261.29 was held on deposit for that matter. The funds were

transferred to the operating account by way of five transfers. The corresponding settlement funds were not deposited into the IOLTA until June 29, 2018. Respondent thereby, converted other clients' funds for no less than eleven days.

e. Between August 14, 2018, and August 23, 2018, Respondent transferred $28,500.00 to the operating account on behalf of the *GTM matter. Approximately $13,901.60 of that amount consisted of funds owed to *GTM clients. Respondent's personal operating expenses depleted the entirety of the *GTM trust funds by no later than September 4, 2018, on which day the operating account ending balance was negative <$2,589.27.>. Respondent replaced the funds in the trust account on September 6, 2018. Respondent thereby converted *GTM's funds for twenty-three days.

f. On January 27, 2017, Respondent transferred $2,422.11 to the operating account on behalf of the *RMTM matter when the corresponding deposit was not made until November 2, 2017. Respondent thereby converted other clients' funds for 279 days.

g. On June 6, 2016, Respondent disbursed $2,000.00 to the operating account on behalf of the *TDRH matter when the corresponding deposit was not made until June 7, 2016. Respondent thereby converted other clients' funds for approximately one day.

h. By letter dated October 25, 2016, Respondent informed his clients, "Homeowners" that a gross settlement of $6,500.00 per property was offered in the *TDRH representation. The letter identified the following breakdown of those funds: 35% contingency fee - $2,275.00; Expert fees/costs - $299.68; and Net to Homeowners - $3,952.32. Eighteen properties were identified as pertaining to the representation, thereby indicating a total recovery of $117,000.00 was forthcoming. Respondent disbursed the corresponding funds to Homeowners in January 2017, all check disbursements cleared in February 2017. Respondent's ledgers, however, identify a total recovery of $120,216.50; $3,216.50 more than the amount expressed to Homeowners. On September 6, 2017, the excess was disbursed

to the operating account rather than split according to the fee agreement. The Trust Account Examiner calculates the corresponding breakdown of all recovery amounts as follows: 35% contingency fee - $42,075.78; Expert fees/costs - $5,394.24; and Net to homeowners - $72,746.48 (i.e. $4,041.47 per property). Accordingly, homeowners each received $89.15 less than the amount due to them per the fee agreement. Respondent thereby misappropriated approximately $1,604.70 belonging to clients.

37. Respondent transacted activity in the operating account that should have been conducted from the trust account, thereby hindering a proper audit trail and endangering client and third-party funds. In each of the instances below, Respondent disbursed payments from the operating account that should have been issued from the trust account. Respondent failed to exercise due professional care by engaging in actions that subvert the trust account rules. In examples (a) through (d) commingling was evident:

a. On April 14, 2016 Respondent disbursed $26,990.93 from the trust account to the operating account, presumably as costs associated to the *WV representation. The corresponding settlement funds were received and held on deposit in the trust account by no later than March 4, 2016, 41 days prior to the removal of the funds. Respondent, however, did not advance all costs. The same day the funds were transferred, Respondent issued no less than three checks from the operating account totaling $21,465.05 to third-party service providers. Respondent, thus, improperly removed unearned funds belonging to third-parties from the trust account resulting in the comingling of those funds in Respondent's business account for a period ranging from seven to eleven days.

b. On October 25, 2016, Respondent informed *TDRH clients that costs totaled $5,394.24. Respondent, however, did not advance those costs. The corresponding settlement funds were deposited into the trust account on January 20, 2017. On January 25, 2017 Respondent disbursed $45,858.24 to himself as earned fees and costs. The same day, Respondent wrote operating account check number 3763 payable to third party service provider American Geotechnical Inc in the amount of $5,005.00 for services rendered on the *TDRH matter. The check cleared on or about February 3, 2017. Respondent thereby improperly removed unearned funds belonging to third-parties from the trust account, resulting in the comingling of those funds in Respondent's business account for a period of ten days.

c. On November 8, 2016, Respondent disbursed $70,155.08 from the trust account to the operating account for expenses incurred in the *CT representation. The corresponding settlement payment was obtained and deposited into the trust account on August 11, 2016, 89 days prior to the removal of funds. The same day the funds were transferred, Respondent issued no less than two checks from the operating account totaling $37,845.28 to third-party service providers. Respondent thereby improperly removed unearned funds belonging to third-parties from the trust account resulting in the comingling of those funds in Respondent's business account for a period ranging from seven to fifteen days.

d. On February 12, 2016, Respondent disbursed $142,078.41 to himself for fees and costs related to the *OL matter. Respondent, however, did not advance all costs. On February 16, 2016, Respondent wrote four checks totaling $27,219.24 to various third-party service providers. Respondent thereby improperly removed unearned funds belonging to third-parties from the trust account resulting in the comingling of those funds in Respondent's business account for a period ranging from seven to eighteen days.

e. On June 22, 2016, Respondent wrote operating account check number 3703 payable to a homeowner in the amount of $4,076.98 as a "Settlement Check" related to the *TDRH representation. The check cleared on June 23, 2016.

That exact amount was moved from the trust account to the operating account on June 27, 2016.

f. On August 22, 2016, Respondent wrote operating account check number 3705 payable to LK in the amount of $2,000.00 as a "Partial Settlement" payment related to the *TDRH representation. The check cleared on August 29, 2016. That exact amount was moved from the trust account to the operating account 77 days prior to the issuing of the check.

g. On August 25, 2016, Respondent wrote operating account check number 3706 payable to L&LR in the amount of $4,076.98 as a "Settlement" payment related to the *TDRH representation. The check cleared on August 29, 2016. That exact amount was moved from the trust account to the operating account on September 1, 2016.

h. On November 23, 2016, Respondent issued no less than two operating checks totaling $72,190.45 to third-party service providers associated with both the *TDRH and *TS matters. The corresponding settlement funds were received and held on deposit in the trust account no later than September 28, 2016, 56 days prior to the check disbursements. Respondent thereby needlessly disbursed third-party funds from his operating account.

38. Respondent failed to cause to maintain contemporaneous copies of individual ledgers, including an administrative funds ledger. On or about July 18, 2018, Respondent's accounting firm, Appenzeller, assisted Respondent's bookkeeper in reclassifying "all trust account activity from January 1, 2018 through the [sic] June 30, 2018 from a single trust liability account to separate sub-liability accounts for each client." Still, Respondent was unable to attribute all transactions conducted in the trust account during the period of review to a client matter.

Moreover, not all individual client ledger entries reflect the name of the payor for funds disbursed. Furthermore, as detailed herein, entries on the recreated records were not limited to activity conducted in the trust account.

39. Respondent failed to perform monthly three-way reconciliations.

40. Respondent failed to maintain adequate duplicate deposit records that identify the name of the client on whose behalf funds were deposited as well as the date and amount of deposit.

41. The examination revealed no less than twenty-five additional instances in which items were directed for deposit into the operating account utilizing the altered IOLTA endorsement stamp. The circumstances resulting in the use of the IOLTA endorsement on those items remains unknown.

42. Some of the items handled in this manner were not associated with a client representation. A United States Treasury check deposited into the operating account on February 15, 2017 bore the manually altered IOLTA endorsement stamp. The check, however, was made payable to Respondent and Michelle Chaix for tax purposes. Accordingly, the item was not associated to a client representation. Some items deposited into the operating account, including other payments from the

United States Treasury, were manually endorsed for deposit into the operating account without the use of the IOLTA endorsement stamp.

43. On July 20, 2016, Respondent deposited a check in the amount of $12,800.00 into the trust account; the item was endorsed by way of the IOLTA endorsement stamp. The check was made payable to Respondent and originated from a revocable living trust associated to unknown entity *RLH. The memo portion of the check associates the payment to unknown entity *GAB. Respondent was unable to attribute the transaction to any known client matter. Yet, Respondent received no less than an additional $7,900.00 associated to *GAB by way of three checks deposited into the operating account on October 6, 2016. All three items bore the altered IOLTA endorsement stamp.

44. A fourth operating account deposit in the amount of $11,450.00 originated from a person associated to *GAB, in that the remitter shared the surname of a person reflected on one of the three *GAB checks. That item also bore the altered IOLTA endorsement stamp. Then, on May 1, 2018, Respondent issued operating account check number 4117 to Skelly, Muchmore, & Oberbillig LLC as a mixed disbursement that included an unspecified amount related to *GAB, who is

noted in the memo portion of the check. The Trust Account Examiner was unable to independently identify a legal matter reflecting Respondent as counsel for *GAB.

45. The actual amount of the initial settlement check in the *TUL representation was $250,000.00, not $255,000.00. In addition, Respondent's contingency fee was 35% of the settlement recovery. Therefore, it is unclear how Respondent determined that $85,000.00 (1/3 of $255,000.00) should have been deducted.

46. The Trust Account Examiner was unable to verify that all entities entitled to receive funds during the period of review were adequately compensated. Respondent's erratic management of the trust account and lack of adequate documentation related to the breakdown of settlement funds and the true costs incurred by Respondent hindered a proper reconciliation of the trust account. As of May 10, 2019, the nature of approximately thirty-seven transactions conducted between June 23, 2015 and February 28, 2018 remained unidentified by Respondent.

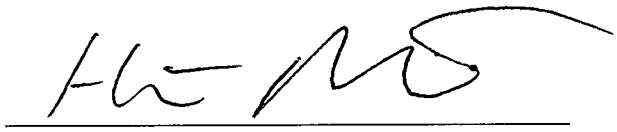
47. Respondent's conduct detailed above violated:

a. Rule 42, ER 1.5(c), Ariz. R. Sup. Ct.
b. Rule 42, ER 1.15(a), Ariz. R. Sup. Ct.
c. Rule 42, ER 1.15(b), Ariz. R. Sup Ct.
d. Rule 42, ER 1.15(d), Ariz. R. Sup. Ct.
e. Rule 42, ER 1.15(e), Ariz. R. Sup. Ct.

f. Rule 42, ER 8.4(c), Ariz. R. Sup. Ct.
g. Rule 43(a), Ariz. R. Sup. Ct.
h. Rule 43(b)(1)(A), Ariz. R. Sup. Ct.
i. Rule 43(b)(1)(B), Ariz. R. Sup. Ct.
j. Rule 43(b)(1)(C), Ariz. R. Sup. Ct.
k. Rule 43(b)(2)(A), Ariz. R. Sup. Ct.
l. Rule 43(b)(2)(B), Ariz. R. Sup. Ct.
m. Rule 43(b)(2)(C), Ariz. R. Sup. Ct.
n. Rule 43(b)(2)(D), Ariz. R. Sup. Ct.
o. Rule 43(d)(3), Ariz. R. Sup. Ct.
p. Rule 43(f)(1), Ariz. R. Sup. Ct.

**DATED** this 22nd day of October, 2019.

**STATE BAR OF ARIZONA**



Hunter F. Perlmeter
Senior Bar Counsel

Original filed with the Disciplinary Clerk of
the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this 22nd day of October, 2019.

by: Susan Homma
HFP:ss

FILED

OCT 15 2019

BY [signature]

**BEFORE THE ATTORNEY DISCIPLINE PROBABLE CAUSE COMMITTEE OF THE SUPREME COURT OF ARIZONA**

| | |
|---|---|
| **IN THE MATTER OF A MEMBER OF THE STATE BAR OF ARIZONA,**<br><br>**JOHN E. CHAIX**<br>**Bar No. 017965**<br><br>Respondent. | No. 18-1544<br><br>**PROBABLE CAUSE ORDER** |

The Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona ("Committee") reviewed this matter on October 11, 2019, pursuant to Rules 50 and 55, Ariz. R. Sup. Ct., for consideration of the State Bar's Report of Investigation and Recommendation and Respondent's Response.

By a vote of 7 - 0 - 2, the Committee finds probable cause exists to file a complaint against Respondent in File No. 18-1544.

**IT IS THEREFORE ORDERED** pursuant to Rule 55(c) and 58(a), Ariz. R. Sup. Ct., authorizing the State Bar counsel to prepare and file a complaint with the Disciplinary Clerk.

Parties may not file motions for reconsideration of this Order.

**DATED** this 15 day of October, 2019.

Lawrence F. Winthrop

Judge Lawrence F. Winthrop, Chair
Attorney Discipline Probable Cause
Committee of the Supreme Court of Arizona

Daisy Flores and Charles Muchmore did not participate in this matter.

Original filed this 15th day
of October, 2019, with:

Lawyer Regulation Records Manager
State Bar of Arizona
4201 N. 24th St., Suite 100
Phoenix, Arizona 85016-6266

Copy mailed this 16th day
of October, 2019, to:

William D. Furnish
Osborn Maledon PA
2929 N Central Ave Ste 2100
Phoenix, AZ 85012-2765
Respondent's Counsel

Copy mailed this 16th day
of October, 2019, to:

Attorney Discipline Probable Cause Committee
Of the Supreme Court of Arizona
1501 West Washington Street, Suite 104
Phoenix, Arizona 85007
E-mail: ProbableCauseComm@courts.az.gov

Lawyer Regulation Records Manager
State Bar of Arizona
4201 N. 24th St., Suite 100
Phoenix, Arizona 85016-6266
E-mail: LRO@staff.azbar.org

By: Susan Homemo

OFFICE OF THE
PRESIDING DISCIPLINARY JUDGE
SUPREME COURT OF ARIZONA
MAR 05 2020
FILED
BY

Hunter F. Perlmeter, Bar No. 024755
Senior Bar Counsel
State Bar of Arizona
4201 N. 24th Street, Suite 100
Phoenix, Arizona 85016-6266
Telephone (602)340-7278
Email: LRO@staff.azbar.org

Geoffrey M. T. Sturr, Bar No. 014063
William D. Furnish, Bar No. 028725
Osborn Maledon PA
2929 N. Central Ave., Ste, 2100
Phoenix, AZ 85012-2765
Telephone 602-640-9377
Email: gsturr@omlaw.com
wfurnish@omlaw.com
Respondent's Counsel

**BEFORE THE PRESIDING DISCIPLINARY JUDGE**

| | |
|---|---|
| **IN THE MATTER OF A MEMBER OF THE STATE BAR OF ARIZONA,**<br><br>**JOHN E. CHAIX,**<br>**Bar No. 017965,**<br><br>Respondent. | **PDJ 2019-9076**<br><br>**State Bar File No. 18-1544**<br><br>**AGREEMENT FOR DISCIPLINE BY CONSENT** |

The State Bar of Arizona, and Respondent John E. Chaix who is represented in this matter by counsel, Geoffrey M. T. Sturr and William D. Furnish, hereby submit their Agreement for Discipline by Consent pursuant to Rule 57(a), Ariz. R.

Sup. Ct. A probable cause order was entered on October 15, 2019. A formal complaint was filed October 22, 2019. Respondent voluntarily waives the right to an adjudicatory hearing, unless otherwise ordered, and waives all motions, defenses, objections or requests which have been made or raised, or could be asserted thereafter, if the conditional admission and proposed form of discipline is approved.

The State Bar is the complainant in this matter; therefore no notice of this agreement is required pursuant to Rule 53(b)(3), Ariz. R. Sup. Ct.

Respondent conditionally admits that his conduct, as set forth below, violated Rule 42, ERs 1.5(c), ER 1.15(a), ER 1.15(b), ER 1.15(d), ER 1.15(e), and subsections (a), (b), (d) and (f) of Rule 43.

Upon acceptance of this agreement, Respondent agrees to accept imposition of the following discipline: suspension for a term of four (4) years and probation for a term of two (2) years upon reinstatement. Respondent also agrees to pay the costs and expenses of the disciplinary proceeding, within 30 days from the date of this order. If costs are not paid within the 30 days interest will begin to accrue at the legal

rate.[1] The State Bar's Statement of Costs and Expenses is attached hereto as **Exhibit A.**

## FACTS

Pursuant to Rule 57(a)(2)(A), the Parties hereby identify the facts necessary to support Respondent's conditional admission that he violated the disciplinary rules set forth above.

1. Respondent was licensed to practice law in Arizona on April 21, 1998.

2. This proceeding arose from the State Bar's receipt on April 24, 2018, of a notice that Respondent's trust account had a negative account balance of <$7,670.35> for the month of April 2018.

3. The State Bar contacted Respondent by letter dated May 29, 2018 and thereafter conducted a multi-year, extended review of Respondent's trust account covering the period of January 2016 through November 2018.

4. Respondent provided information to the State Bar between July 2018 and April 2019.

---

[1] Respondent understands that the costs and expenses of the disciplinary proceeding include the costs and expenses of the State Bar of Arizona, the Disciplinary Clerk, the Probable Cause Committee, the Presiding Disciplinary Judge and the Supreme Court of Arizona.

5. Over the course of the State Bar's investigation, its trust account examiner identified approximately fifty-four transactions that did not comply with Respondent's obligations under ER 1.15 and Rule 43, which are summarized below and in the attached Appendix A.

6. The fifty-four transactions totaled $637,933.07 in client funds deposited into Respondent's operating account that should have been deposited into his trust account.

7. During the review period of January 2016 through November 2018, Respondent had engaged two bookkeepers: Renee Williamson (until approximately May 2017) and Renee Purdue (from May 2017 onward).

8. If this matter were to go to hearing, Respondent would acknowledge that he failed to ensure that Ms. Williamson and Ms. Purdue had sufficient experience and training in the operation and maintenance of trust account records; did not properly supervise the work performed by his staff and bookkeepers in connection with his trust account; and did not ensure that, during the inspection period until May 2018, three-way account reconciliations were performed on a monthly basis.

9. If this matter were to go to hearing, Respondent would acknowledge that, as a direct consequence of his failure to take such actions, funds were transferred from Respondent's trust account to his operating account that should have remained in Respondent's trust account.

10. If this matter were to go to hearing, Respondent would acknowledge that, as a direct consequence of his failure to take such actions, contemporaneous copies of individual client ledgers, including an administrative funds ledger, were not maintained.

11. If this matter were to go to hearing, Respondent would acknowledge that, as a direct consequence of his failure to take such actions, adequate duplicate deposit records that identify the name of the client on whose behalf funds were deposited as well as the date and amount of deposit were not maintained during the period of review.

12. During the State Bar's investigation, Respondent paid clients' statutory interest for their delay in receipt of settlement funds.

**CLIENT *TUL**

13. In October 2017, Respondent obtained a settlement of $500,000.00 for client *TUL on a four-month payment schedule.

14. Respondent drafted a settlement breakdown letter to client *TUL that allocated the $500,000.00 as follows: (a) $175,000.00 for Respondent's 35% contingency fee; (b) $74,176.63 for "Case Costs"; and (c) $250,823.37 as a "Net Amount" of the settlement to client *TUL.

15. On October 23, 2017, Respondent instructed his secretary to cross-out his trust account stamp on the back of the first $250,000 settlement check, and hand-write his operating account number in order to deposit the payment into his operating account. Of that amount, $823.37 was due to *TUL as part of the *TUL's "Net Amount." The remaining portion of that settlement payment represented Respondent's contingency fee and amounts due to third-party service providers.

16. Between November 2017 and February 2018, Respondent received additional settlement payments which totaled $249,000.00: (a) $83,000.00 on November 28, 2017; (b) $83,000.00 on December 27, 2017; and (c) $83,000.00 on February 2, 2018. Respondent deposited those settlement payments into his trust account.

17. Between November 2017 and March 2018, Respondent made eleven transfers from his trust account to his operating account, resulting in the transfer of all of *TUL's settlement funds. Respondent utilized those funds for amounts due

third parties related to the *TUL litigation, costs for unrelated matters and operating expenses. The dates and amounts of those transactions are stated in Paragraphs 1-10 of **Appendix A**.

18. On April 17, 2018, Respondent issued trust account check number 3008 payable to client *TUL in the amount of $250,823.37. *TUL's check was presented for payment on April 25, 2018, when the trust account balance was $0.00. Respondent's bank honored the check to *TUL and charged Respondent a $28.75 overdraft fee, leaving the account with a negative balance of <$250,852.12>.

19. Upon learning that there were insufficient funds in his trust account, Respondent deposited $255,000.00 from his operating account to his trust account.

20. If this matter were to go to hearing, Respondent would acknowledge that he failed to appreciate and fulfill his obligations with respect to the management of his trust account, was regrettably indifferent to those obligations, and as a consequent improperly handled funds belonging to client *TUL.

21. If this matter were to go to hearing, Respondent would offer evidence establishing that client *TUL received all settlement funds to which it was entitled, and that he caused client *TUL to also receive an additional payment of interest at

the statutory rate for the time during which Respondent failed to promptly disburse client *TUL's settlement funds.

**CLIENTS *WV, *GTM, *RMTM, *FNT, *TRDH, *CT, *OL, *TS**

22. If this matter were to go to hearing, Respondent would acknowledge that, with respect to clients *WV, *GTM, *FNT, *RMTM and *TRDH, he failed to properly supervise the operation of his trust account and that as a consequence, funds belonging to those clients were either not timely paid or were transferred from Respondent's trust account to his operating account when they should have remained in Respondent's trust account.

23. The dates and amounts of those transactions are stated in Paragraphs 11-17 of **Appendix A** and summarized below.

24. **Client *WV**: Between January 2016 and March 2016, Respondent received $395,000.00 in settlement of a matter on behalf of client *WV, of which $229,759.07 reflected settlement funds due to client *WV. Respondent did not pay those funds to Client *WV until August 11, 2016.

25. **Client *TRDH**: In October 2016, Respondent notified clients in the *TRDH matter that a gross settlement of $6,500.00 per property had been reached and that clients would receive $3,952.32 per property net of attorneys' fees and

litigation costs. Between January 2017 and February 2017, *TRDH clients received settlement proceeds. If the matter were to go to hearing, Respondent would acknowledge that, due to an accounting error, an additional $3,216.50 was attributed to recovery in the *TRDH matter that reflected reimbursement from opposing counsel for expert costs in a separate client matter *TH. Respondent provided corrected client ledgers to the State Bar.

26. **Client *RMTM**: On January 27, 2017, Respondent transferred $2,422.11 from his trust account to his operating account to pay for expert fees and costs in the *RMTM matter when there were no funds in Respondent's trust account attributed to client *RMTM to cover those costs. On November 2, 2017, a $80,206.18 settlement payment was deposited into Respondent's trust account.

27. **Client *FNT**: In May 2017, Respondent disbursed $73,451.94 from his trust account to his operating account relating to representation of client *FNT. Portions of these funds were then disbursed from Respondent's operating account for other matters and operating expenses. In December 2017, Respondent received the final settlement payment for client *FNT totaling $328,200.00, and disbursed the portion of those funds reflecting client *FNT's settlement funds to the client on December 14, 2017.

28. **Client *GTM**: Between August 14, 2018, and August 23, 2018, Respondent transferred $28,500.00 from his trust account to the operating account on behalf of clients in the *GTM matter, approximately $13,901.60 of which were settlement funds owed to *GTM clients. Respondent replaced the funds in the trust account on September 6, 2018.

29. In addition to the foregoing, if the matter were to go to hearing, Respondent would acknowledge that his failure to properly supervise the maintenance of his trust account resulting in transactions from his operating account for litigation costs in client matters *TRDH, *CT, *OL and *TS. The dates and amounts of those transactions are stated in Paragraphs 18-24 of **Appendix A**.

**FAILURE TO MAINTAIN PROPER CLIENT SUBLEDGERS**

30. If this matter were to go to hearing, Respondent would acknowledge that he did not maintain proper client subledgers during the review period. Respondent worked with his accountant to create client subledgers, including a subledger containing transactions that could not be attributed to specific clients. The balance of this subledger had a balance of negative <$12,734.62> on May 6, 2016 and a balance of negative <$249,915.35> on October 3, 2016. Respondent would assert, however, that the negative balance of this miscellaneous subledger does not

reflect a negative balance of Respondent's trust account, which had an average balance of $207,145.99 in May 2016, $181,598.77 in June 2016, $231,124 in July 2016, $416,162.70 in August 2016, $126,897.24 in September 2016 and $624,487.77 in October 2016.

## CONDITIONAL ADMISSIONS

Respondent's admissions are being tendered in exchange for the form of discipline stated below and are submitted freely and voluntarily and not as a result of coercion or intimidation. Respondent conditionally admits that he violated Rule 42, Ariz. R. Sup. Ct., ER 1.5, 1.15(a), 1.15(b), 1.15(d), 1.15(e) and Rule 43(b), Rule 43(a), Rule 43(d), and Rule 43(f).

## CONDITIONAL DISMISSALS

The State Bar has conditionally agreed to dismiss allegations regarding ERs 8.4(c) and 8.4(d).

## RESTITUTION

Restitution is not an issue in this matter.

## SANCTION

Respondent and the State Bar of Arizona agree that based on the facts and circumstances of this matter, as set forth above, the following sanctions are

appropriate: Suspension of four (4) years, and probation for two (2) years following reinstatement. The terms of probation will consist of:

1. TAEEP: Respondent shall attend a half-day Trust Account Ethics Enhancement Program (TAEEP). Respondent shall contact the State Bar Compliance Monitor at (602) 340-7258, within ten (10) days from the date of service of an Order of reinstatement, to schedule attendance at the next available class. Respondent will be responsible for the cost of attending the program.

2. LOMAP (Trust Account Records Review): Respondent shall contact the State Bar Compliance Monitor at 602-340-7258, within ten (10) days from the date of service of an Order of reinstatement. Respondent shall sign terms and conditions of participation, which shall be incorporated herein. The terms and conditions will include submission of specified trust account records on a quarterly basis. Respondent shall be required to undergo a quarterly review of his trust account records and shall timely complete any follow up deemed necessary as a result of those reviews. Respondent will be responsible for any costs associated with LOMAP.

3. Respondent shall commit no further violations of the Rules of Professional Conduct.

If Respondent violates any of the terms of this agreement, the State Bar may bring further discipline proceedings.

**LEGAL GROUNDS IN SUPPORT OF SANCTION**

In determining an appropriate sanction, the parties consulted the American Bar Association's *Standards for Imposing Lawyer Sanctions* (the "*Standards*") pursuant to Rule 57(a)(2)(E). The *Standards* are "designed to promote consistency in the imposition of sanctions" by identifying relevant factors that courts should consider and then applying those factors to situations where lawyers have engaged in various types of misconduct. *Standards* 1.3, Commentary. The *Standards* provide guidance with respect to an appropriate sanction in this matter. *In re Peasley,* 208 Ariz. 27, 33 ¶ 23, 35 ¶ 33 (2004); *In re Rivkind*, 162 Ariz. 154, 157 (1990).

In determining an appropriate sanction, the Court considers the duty violated, the lawyer's mental state, the actual or potential injury caused by the misconduct and the existence of aggravating and mitigating factors. *In re Peasley*, 208 Ariz. at 35 ¶ 33; *Standard* 3.0.

The parties agree that *Standard 4.1, Failure to Preserve the Client's Property,* is the appropriate *Standard* given the facts and circumstances of this matter: *Standard 4.12* provides that "[s]uspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client."

**The duty violated**

As described above, Respondent's conduct violated his duty to his clients.

**The lawyer's mental state**

For purposes of this agreement, the parties agree that Respondent acted knowingly as that term is defined in the *Standards*. Respondent acknowledges that he was indifferent to his obligations to properly maintain his trust account, regrets his failure to fulfill his obligations, and accepts responsibility for his conduct and its consequences.

**The extent of the actual or potential injury**

For purposes of this agreement, the parties agree that Respondent's conduct caused injury to clients who did not timely receive settlement funds and potential injury to other clients.

**Aggravating and mitigating circumstances**

The presumptive sanction is Suspension under *Standard 4.12*. The parties conditionally agree that the following aggravating and mitigating factors should be considered:[2]

**In aggravation:**

a) 9.22(c) a pattern of misconduct.

b) 9.22(d) multiple offenses.

c) 9.22(i) substantial experience in the practice of law.

**In mitigation:**

a) 9.32(a) absence of a prior disciplinary record.

**Discussion**

Based on *Standard 4.12*, and in light of the aggravation and mitigation presented in the record, the parties conditionally agree that a suspension of four years is within the range of appropriate sanctions and will serve the purposes of lawyer discipline.

---

[2] Counsel have discussed Section 9.22(b) in aggravation and Section 9.32(e) in mitigation, could not reach agreement on the applicability of these sections, and therefore have not included them in the discussion above.

## CONCLUSION

The object of lawyer discipline is not to punish the lawyer, but to protect the public, the profession and the administration of justice. *In re Peasley,* 208 Ariz. 27, 39 ¶ 53 (2004) (citation omitted). Recognizing that determination of the appropriate sanction is the prerogative of the Presiding Disciplinary Judge, the State Bar and Respondent believe that the objectives of discipline will be met by the imposition of the proposed sanction of Suspension with Probation and the imposition of costs and expenses. A proposed form of order is attached hereto as Exhibit B.

**DATED** this 5th day of March 2020

**STATE BAR OF ARIZONA**

Hunter F. Perlmeter
Senior Bar Counsel

**This agreement, with conditional admissions, is submitted freely and voluntarily and not under coercion or intimidation. I acknowledge my duty under the Rules of the Supreme Court with respect to discipline and reinstatement. I understand these duties may include notification of clients, return of property and other rules pertaining to suspension.**

**DATED** this 5th day of March 2020

John E. Chaix
Respondent

**DATED** this 5th day of March, 2020.

Osborn Maledon PA

Geoffrey M. T. Sturr
Counsel for Respondent

Approved as to form and content

Maret Vessella
Chief Bar Counsel

Original filed with the Disciplinary Clerk of
the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this 5th day of March, 2020.

Copy of the foregoing emailed
this 5th day of March, 2020, to:

The Honorable William J. O'Neil
Presiding Disciplinary Judge
Supreme Court of Arizona
1501 West Washington Street, Suite 102
Phoenix, Arizona 85007
E-mail: officepdj@courts.az.gov

Copy of the foregoing mailed/emailed
this 5th day of March, 2020, to:
Geoffrey M. T. Sturr
William D. Furnish
Osborn Maledon PA
2929 N Central Ave Ste 2100
Phoenix, AZ 85012-2765
Email: gsturr@omlaw.com
wfurnish@omlaw.com
Respondent's Counsel

Copy of the foregoing hand-delivered
this 5th day of March, 2020, to:

Lawyer Regulation Records Manager
State Bar of Arizona
4201 N. 24th St., Suite 100
Phoenix, Arizona 85016-6266
by: Karen E. Calyce
HFP/~~SS~~ KEC

## APPENDIX A

## CLIENT *TUL

1. Eighty-two disbursements, totaling $195,742.08, were initiated between October 23, 2017 and November 28, 2017 in Respondent's operating account.

2. On November 28, 2017, Respondent's operating account had a negative balance of <$6,368.74>. On November 29, 2017, Respondent transferred $30,000.00 in funds from his trust account to his operating account belonging to *TUL. Respondent used these funds to pay operating costs and other expenses.

3. On December 5, 2018, Respondent's operating account had a balance of negative <$3,984.80>. On December 6, 2017, Respondent transferred $30,000.00 in funds from his trust account to his operating account belonging to *TUL. Respondent used these funds to pay for operating costs and other expenses.

4. On December 14, 2017, Respondent's operating account had a negative balance. On December 15, 2017, Respondent transferred $30,000.00 in funds from his operating account to his trust account, a portion of which belonged to client *TUL. Respondent used these funds to pay for operating costs and other expenses.

5. On January 11, 2018, Respondent transferred $50,000.00 belonging to *TUL from the trust account to his operating account, resulting in an ending operating account balance of $64,074.67 on that day when approximately $45,170.20 in payments were outstanding.

6. On January 30, 2018, Respondent's operating account had a negative balance of <$23,668.26>. On January 31, 2018, Respondent transferred $60,000.00 transfer from the trust account, of which a portion belonged to client *TUL. Respondent used these funds to pay for operating costs and other expenses.

7. On February 15, 2018, Respondent operating account had a negative balance of <$4,820.03>. On February 16, 2018, Respondent transferred $30,000.00 from his trust account to his operating account, a portion of which belonged to client *TUL. Respondent used these transferred funds to pay for outstanding operating costs and other expenses.

8. On March 2, 2018, Respondent's operating account had a negative balance of <$1,422.49>. On March 5, 2018, Respondent transferred $30,000.00 from the trust account belonging to *TUL. Respondent used these transferred funds to pay for outstanding operating costs and other expenses.

9. On March 13, 2018, Respondent's operating account had a negative balance of <$20,003.66>. On March 14, 2018, Respondent transferred $30,000.00 from his trust account to his operating account. Respondent used these transferred funds to pay for outstanding operating costs and other expenses.

10. On March 28, 2018, Respondent's operating account had a negative balance of <$7.50>. On March 29, 2018, Respondent transferred $6,778.15 from his trust account to his operating account, a portion of which belonged to client *TUL. Respondent used these transferred funds to pay for outstanding operating costs and other expenses.

**CLIENTS *WV, *GTM, *RMTM, *FNT, *TRDH, *CT, *OL, *TS**

11. On March 4, 2016, Respondent received settlement funds in the *WV matter, of which client *WV was due a net total of $229,759.07. On March 10, 2016 Respondent disbursed a portion of earned fees to himself and issued a disbursement to the client until August 11, 2016. Respondent moved $87,488.36 in earned fees from his trust account to his operating account and used those funds to pay for outstanding operating costs and other expenses.

12. On June 6, 2016, Respondent transferred $2,000.00 from his trust account to his operating account in connection with the *TDRH client matter. On June 7, 2016, a corresponding deposit was made into Respondent's trust account.

13. On May 26, 2017, Respondent's operating account balance was $2,800.56, and a check cleared for $6,205.00 for payments unrelated to client *FNT. On May 26, 2017, Respondent transferred $40,000.00 from the trust account purportedly from the *FNT matter when that client subledger did not have any funds in Respondent's trust account. Respondent used these transferred funds to pay for outstanding operating costs and other expenses.

14. During the month of May 2017, Respondent disbursed $73,451.94 from his trust account to his operating account in connection with the *FNT client matter. As a result, the *FNT client subledger had a balance of <$58,401.94>. On October 4, 2017, Respondent disbursed an additional $4,000.00 on behalf of that matter, resulting in a subledger balance of <$62,401.94>. On November 28, 2017, Respondent deposited a $328,000.00 settlement check for the *FNT client matter into trust, restoring the balance of the *FNT client subledger.

15. Between June 18 and June 28, 2018, Respondent disbursed $38,185.87 from his trust account to his operating account in connection with the *RMTM client

matter. During this time, the *RMTM client subledger contained $261.29. On the following day, June 29, 2018, Respondent deposited corresponding settlement funds into his trust account for the *RMTM matter.

16. Between August 14, 2018, and August 23, 2018, Respondent transferred $28,500.00 to the operating account on behalf of the *GTM matter. A portion of those funds were settlement amounts owed to clients in the *GTM matter. On September 6, 2018, Respondent replaced the funds in his trust account.

17. On January 27, 2017, Respondent transferred $2,422.11 to the operating account on behalf of the *RMTM matter reflecting expert costs incurred in that client matter, which resulted in a negative balance in the *RMTM client subledger. On November 2, 2017, Respondent deposited a settlement check of $80,206.18 in the *RMTM client matter restoring a positive balance to that client subledger.

18. On February 12, 2016, Respondent disbursed $142,078.41 from trust to operating in fees and costs related to the *OL matter. On February 16, 2016, Respondent wrote four checks totaling $27,219.24 to various third-party service providers from his operating account in connection with the *OL matter.

19. On June 22, 2016, Respondent wrote operating account check number 3703 payable to a homeowner in the amount of $4,076.98 as a "Settlement Check"

related to the *TDRH representation. The check cleared on June 23, 2016, and that amount was moved from the trust account to the operating account on June 27, 2016.

20. On June 6, 2016, Respondent transferred $2,000 from his trust account to his operating account in connection with the *TDRH matter. On August 22, 2016, Respondent wrote operating account check number 3705 payable to client *LK in the amount of $2,000.00 as a "Partial Settlement" payment related to the *TDRH representation and the check cleared on August 29, 2016.

21. On August 25, 2016, Respondent issued a check numbered 3706 from his operating account payable to client *L&LR in the amount of $4,076.98 as "Settlement" payment in the *TDRH client matter. The check cleared on August 29, 2016. On September 1, 2016, Respondent transferred $4,076.98 from his trust account to his operating account.

22. On October 25, 2016, Respondent informed *TDRH clients that costs totaled $5,394.24. On January 20, 2017, $117,000.00 in settlement funds for the *TRDH client matter were deposited into Respondent's trust account. On January 25, 2017 Respondent disbursed $40,950.00 in attorneys' fees and $4,908.24 in costs. The same day, Respondent wrote operating account check number 3763 payable to third party service provider American Geotechnical Inc in the amount of $5,005.00 for

services rendered on the *TDRH matter. The check cleared on or about February 3, 2017.

23. On August 11, 2016, Respondent received $209,550.88 in settlement funds in the *CT client matter. On November 8, 2016, Respondent disbursed $70,155.08 from the trust account to the operating account for expenses incurred in the *CT client matter. On or about November 8, 2016, Respondent issued approximately two checks from his operating account totaling $37,845.28 to third-party service providers in connection with the *CT matter.

24. Between August 5, 2016 and August 11, 2016, Respondent deposited $167,000.00 in his trust account reflecting settlement funds received in the *TS client matter. On September 28, 2016, Respondent deposited $74,299.80 in his trust account reflecting settlement funds received in the *TRDH matter. On November 23, 2016, Respondent issued two checks from his operating account totaling $72,190.45 to third-party service providers who provided litigation services in the *TDRH and *TS client matters.

**EXHIBIT A**

**Statement of Costs and Expenses**

In the Matter of a Member of the State Bar of Arizona
John E. Chaix, Bar No. 017965, Respondent

File No. 18-1544

**Administrative Expenses**

The Supreme Court of Arizona has adopted a schedule of administrative expenses to be assessed in lawyer discipline. If the number of charges/complainants exceeds five, the assessment for the general administrative expenses shall increase by 20% for each additional charge/complainant where a violation is admitted or proven.

Factors considered in the administrative expense are time expended by staff bar counsel, paralegal, secretaries, typists, file clerks and messenger; and normal postage charges, telephone costs, office supplies and all similar factors generally attributed to office overhead. As a matter of course, administrative costs will increase based on the length of time it takes a matter to proceed through the adjudication process.

| | |
|---|---|
| ***General Administrative Expenses for above-numbered proceedings*** | **$ 1,200.00** |

Additional costs incurred by the State Bar of Arizona in the processing of this disciplinary matter, and not included in administrative expenses, are itemized below.

**Staff Investigator/Miscellaneous Charges**

| | | | |
|---|---|---|---|
| 3/8/2019 | Investigator Mileage for service of subpoena | $ | 2.32 |
| Total for staff investigator charges | | $ | 2.32 |

| | |
|---|---|
| TOTAL COSTS AND EXPENSES INCURRED | $ 1,202.32 |

**EXHIBIT B**

**BEFORE THE PRESIDING DISCIPLINARY JUDGE**

| | |
|---|---|
| **IN THE MATTER OF A MEMBER OF THE STATE BAR OF ARIZONA,** | **PDJ 2019-9076** |
| **JOHN E. CHAIX, Bar No. 017965,** | **FINAL JUDGMENT AND ORDER** |
| | State Bar No. 18-1544 |

The Presiding Disciplinary Judge of the Supreme Court of Arizona, having reviewed the Agreement for Discipline by Consent pursuant to Rule 57(a), Ariz. R. Sup. Ct., accepts the parties' proposed agreement.

Accordingly:

**IT IS ORDERED** that Respondent, **John E. Chaix**, is Suspended for four (4) years for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents, effective 30 days from the date of this order.

**IT IS FURTHER ORDERED** that, upon reinstatement, Respondent shall be placed on probation for a period of two (2) years. **The terms of probation will consist of:**

a) TAEEP: Respondent shall attend a half-day Trust Account Ethics Enhancement Program (TAEEP). Respondent shall contact the State Bar

Compliance Monitor at (602) 340-7258, within ten (10) days from the date of service of an order of reinstatement, to schedule attendance at the next available class. Respondent will be responsible for the cost of attending the program.

b) LOMAP (Trust Account Records Review): Respondent shall contact the State Bar Compliance Monitor at 602-340-7258, within ten (10) days from the date of service of an order of reinstatement. Respondent shall sign terms and conditions of participation, which shall be incorporated herein. The terms and conditions will include submission of specified trust account records on a quarterly basis. Respondent shall be required to undergo a quarterly review of his trust account records and shall timely complete any follow up deemed necessary as a result of those reviews. Respondent will be responsible for any costs associated with LOMAP.

Respondent shall commit no further violations of the Rules of Professional Conduct.

**IT IS FURTHER ORDERED** that Respondent shall be subject to any additional terms imposed by the Presiding Disciplinary Judge as a result of reinstatement hearings held.

**IT IS FURTHER ORDERED** that, pursuant to Rule 72 Ariz. R. Sup. Ct., Respondent shall immediately comply with the requirements relating to notification of clients and others.

**IT IS FURTHER ORDERED** that Respondent pay the costs and expenses of the State Bar of Arizona in the amount of $ _____, within 30 days from the date of service of this Order.

**IT IS FURTHER ORDERED** that Respondent shall pay the costs and expenses incurred by the disciplinary clerk and/or Presiding Disciplinary Judge's Office in connection with these disciplinary proceedings in the amount of _____, within 30 days from the date of service of this Order.

**DATED** this _____ day of March, 2020.

_____

**William J. O'Neil, Presiding Disciplinary Judge**

Original filed with the Disciplinary Clerk of
the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this _____ day of March, 2020.

Copies of the foregoing mailed/emailed
this _____ day of March, 2020, to:

Geoffrey M. T. Sturr
Osborn Maledon PA
2929 N. Central Ave., Ste. 2100
Phoenix, AZ 85012-2765
Email: gsturr@omlaw.com
Respondent's Counsel

Copy of the foregoing emailed/hand-delivered
this ____ day of March, 2020, to:

Hunter F. Perlmeter
Senior Bar Counsel
State Bar of Arizona
4201 N. 24th Street, Suite 100
Phoenix, Arizona 85016-6266
Email: LRO@staff.azbar.org

Copy of the foregoing hand-delivered
this ____ day of March, 2020 to:

Lawyer Regulation Records Manager
State Bar of Arizona
4201 N 24th Street, Suite 100
Phoenix, Arizona 85016-6266

by:_____

**BEFORE THE PRESIDING DISCIPLINARY JUDGE**

| | |
|---|---|
| **IN THE MATTER OF A MEMBER OF THE STATE BAR OF ARIZONA,** | **PDJ 2019-9076** |
| **JOHN E. CHAIX, Bar No. 017965** | **FINAL JUDGMENT AND ORDER** |
| | State Bar No. 18-1544 |
| | **FILED MARCH 24, 2020** |

The Presiding Disciplinary Judge accepted the parties' Agreement for Discipline by Consent pursuant to Rule 57(a), Ariz. R. Sup. Ct.

Accordingly:

**IT IS ORDERED** Respondent, **JOHN E. CHAIX, Bar No. 017965** is suspended for four (4) years for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents, effective thirty (30) days from the date of this order.

**IT IS FURTHER ORDERED** upon reinstatement, Respondent shall be placed on probation for a period of two (2) years. The terms of probation are as follows:

a) Trust Account Ethics Enhancement Program (TAEEP): Respondent shall attend a half-day TAEEP. Respondent shall contact the State Bar Compliance Monitor at (602) 340-7258, within ten (10) days from the date of an order of reinstatement, to schedule attendance at the next available class. Respondent shall be responsible for the cost of attending the program.

b) Law Office Management Assistance Program (LOMAP) Trust Account Records Review: Respondent shall contact the State Bar Compliance Monitor at 602-340-7258, within ten (10) days from the date of the order of reinstatement. Respondent shall sign terms and conditions of participation, which shall be incorporated herein. The terms and conditions will include submission of specified trust account records on a quarterly basis. Respondent shall be required to undergo a quarterly review of his trust account records and shall timely complete any follow up deemed necessary as a result of those reviews. Respondent shall be responsible for any costs associated with LOMAP.

Respondent shall commit no further violations of the Rules of Professional Conduct.

**IT IS FURTHER ORDERED** Respondent shall be subject to any additional terms imposed by the Presiding Disciplinary Judge as a result of reinstatement hearings held.

**IT IS FURTHER ORDERED** pursuant to Rule 72 Ariz. R. Sup. Ct., Respondent shall immediately comply with the requirements relating to notification of clients and others.

**IT IS FURTHER ORDERED** that Respondent pay the costs and expenses of the State Bar of Arizona in the amount of $ 1,202.32 within thirty (30) days from the date of this Order. There are no costs or expenses incurred by the Office of the Presiding Disciplinary Judge's Office.

**DATED** this 24th day of March 2020.

*William J. O'Neil*

**William J. O'Neil, Presiding Disciplinary Judge**

Copies of the foregoing mailed/emailed
this 24th day of March, 2020, to:

Geoffrey M. T. Sturr
William D. Furnish
Osborn Maledon PA
2929 N. Central Ave., Ste. 2100
Phoenix, AZ 85012-2765
Email: gsturr@omlaw.com
wfurnish@omlaw.com
Respondent's Counsel

Hunter F. Perlmeter
Senior Bar Counsel
State Bar of Arizona
4201 N. 24th Street, Suite 100
Phoenix, Arizona 85016-6266
Email: LRO@staff.azbar.org

by: MSmith